

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-10451-RWZ  
CIVIL ACTION NO. 04-10717-RWZ

JOSEPH SCHMITT

v.

DEPARTMENT OF CORRECTION, et al.

ORDER

October 10, 2007

ZOBEL, D.J.

Plaintiff, at the time a prisoner at MCI-Cedar Junction, brought an action under 42 U.S.C. § 1983 against the Department of Correction and a number of its officials. A jury found that the defendants violated plaintiff's right to free speech by censoring his mail, confiscating two stories entitled "Weekend in Paradise" and "Rain Dance," and filing disciplinary reports dated February 21, 2002, and March 15, 2002. (Jury Verdict (Docket # 70).)<sup>1</sup>

Following the verdict, plaintiff moved for a court order commanding, inter alia, the return of the confiscated material. (Docket # 72.) On July 20, 2006, the court ruled that it lacked jurisdiction to act on plaintiff's motion because his appeal of number of post-trial decisions by the court remained pending. (Docket # 91.) On February 21, 2007, the United States Court of Appeals for the First Circuit affirmed the post-trial

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<sup>1</sup> Citations to docket numbers refer to the docket of Civil Action No. 04-10451-RWZ.

decisions by the court. (Docket # 99.) On September 4, 2007, plaintiff moved for a ruling on the pending motion.

Plaintiff's Motion for Court Order (Docket # 72) is ALLOWED to the extent that defendants shall return the confiscated stories and envelopes. The court is constrained to accept the jury's determination that defendants violated plaintiff's right to free speech by confiscating these stories. (Docket # 70.) In all other respects, the motion is DENIED.

Defendants' motion for sanctions against plaintiff for his failure to comply with the court's orders to cease filing duplicative and frivolous motions (Docket # 86) is DENIED.

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October 10, 2007  
DATE

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/s/Rya W. Zobel  
RYA W. ZOBEL  
UNITED STATES DISTRICT JUDGE